CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 148

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

MARGIE L. HIGHSMITH.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JULY 16, 1919.

(27223)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 468.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

MARGIE L. HIGHSMITH.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December term, 1918, of said court, before the Honorable William C. Hook, circuit judge, and the Honorable Jacob Trieber, district judge.

Attest:

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the thirteenth day of September, A. D. 1918, a transcript of record pursuant to a writ of error directed to the District Court of the United States for the District of New Mexico, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein The United States of America was plaintiff in error, and Margie L. Highsmith was defendant in error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit:

1 Be it remembered, that on the 29th day of July, 1918, there was filed in the office of the Clerk of the District Court of the United States for the District of New Mexico, in cause numbered 551 on the Law Docket of said court, wherein the United States of America was plaintiff, and Margie L. Highsmith was defendant, a Petition for Writ of Error in said cause, in words and figures as follows, to-wit:

Petition for Writ of Error.

To the Honorable Colin Neblett, District Judge:

The above-named petitioner, the United States of America, feeling aggrieved by the "Order for payment of interest" entered in the above entitled case on the 30th day of January, A. D. 1918, awarding to defendant Margie L. Highsmith interest at the rate of six per cent per annum from April 19, 1912, to date of verdict, does hereby apply for a writ of error from the Circuit Court of Appeals for the Eighth Circuit, for the reasons set forth in the assignment of errors filed herewith, and prays that the said writ of error may be allowed and that citation issue as provided by law, and that a transcript of the record upon which said order was based, duly authenticated, to be sent to the said United States Circuit Court of Appeals, under the rules of said court in such cases made and provided.

S. BURKHART,
United States Attorney.

2 P. W. DENT,
District Counsel, U. S. Reclamation Service.

(Assignment of Errors—Filed July 29, 1918.)

Comes now the petitioner in above entitled cause and files the following assignment of errors upon which it will rely upon its prosecution of its writ of error in the above entitled cause, to the "Order for payment of interest" entered by this court on the 30th day of January, A. D. 1918.

I.

That the United States District Court for the District of New Mexico erred in ordering and directing that the United States deposit in court for the benefit of defendant interest

on the award from April 19, 1912, to date of verdict, for the reason that interest cannot properly be allowed against the United States in a condemnation suit for any period prior to date of final judgment.

II.

That the United States District Court for the District of New Mexico erred in ordering and directing the United States to deposit interest on the award from April 19, 1912, to date of verdict, for the reason that interest cannot properly be allowed against the United States in a suit of this character for any period prior to date of order of court placing plaintiff in possession of the lands condemned.

III.

3 That the United States District Court for the District of New Mexico erred in awarding interest at the rate of six per cent per annum against the United States from April 19, 1912, to date of verdict, for the reason that there is no authority in law for allowing interest at said rate on judgments against the United States.

IV.

That the United States District Court for the District of New Mexico erred in awarding interest against the United States from April 19, 1912, to date of verdict, for the reason that interest may be allowed only when the same is judicially demanded and from the date of such judicial demand.

Wherefore Petitioner prays that said judgment or supplementary order be reversed and that said District Court for the District of New Mexico be ordered to enter a decree reversing the decision of the lower court in said cause.

S. BURKHART,
United States Attorney.
P. W. DENT,
District Counsel, U. S. Reclamation Service.

(Order allowing writ of error—Filed July 29, 1918)

On this day came on to be heard the petition of the United States of America praying for writ of error in above entitled cause from the United States Circuit Court of Appeals, Eighth Circuit, and the court having read the petition and the
4 accompanying assignment of errors and being fully advised in the premises, it is ordered that said writ of

error shall be and the same hereby is allowed in accordance with the provisions of said petition and the assignment of errors filed therewith.

Done at Kansas City, Mo., this 19th day of July, A. D. 1918.

KIMBROUGH STONE,
Judge Circuit Court of Appeals, 8th Circuit.

(Agreed Statement of Facts on Writ of Error—Filed July 29, 1918.)

It is hereby stipulated and agreed between the parties in above entitled cause that the following statement of facts shall constitute the record on prosecution of writ of error to review the order of the United States District Court for the District of New Mexico entered in said cause on the 30th day of January, 1918, entitled "Order for payment of interest".

1. That on April 19, 1912, the United States of America appropriated for use as a reservoir site, under the Act of Congress approved June 17, 1902 (32 Stat., 388) certain land and property of defendant in error; that thereafter, to-wit on the 18th day of January, 1915, the United States filed petition alleging the appropriation of said property stating that no compensation had been paid to defendant in error therefor, and praying for the fixing of compensation to which defendant in error was entitled and the condemnation thereof.

5 2. That on February 23, 1917, commissioners therefore duly appointed by the court for the appraisement of defendant's damages returned an award fixing the compensation of defendant in the sum of $22,498.96, and recited that said sum did not include interest on the award from the date of appropriation. That said award was duly confirmed by the court on April 19, 1917. That appeal from said award of the commissioners was duly taken as provided by law by both the United States and defendant, and the case was tried to a jury on such appeal, verdict being returned by the jury under date of January 12, 1918. That by agreement of the parties the jury was instructed that the question of whether or not defendant was entitled to interest on the award was a matter of law for the determination of the court; and the jury was handed form of verdict, as follows:

In the District Court of the United States, for the District of New Mexico.

United States of America, Plaintiff,
No. 551, vs. Law.
Margie L. Highsmith, Defendant.

Verdict.

We, the jury in the above entitled cause, upon our oaths assess the damages of Margie L. Highsmith, for 314.92 acres of land at the sum of ——— with interest at the rate of 6% per annum from April 19, 1912.

Foreman.

The court, having theretofore considered the matter of interest and having held that interest on the award from
6 date of the appropriation, April 19, 1912, to date of verdict is proper and should be allowed as a matter of law, the form of verdict so provided, it being agreed that separate order requiring the deposit of interest should be entered, in order that writ of error might be prosecuted to review the decision of the court on the matter of interest only.

3. That in connection with the form of verdict above the jury were instructed to fix the amount of compensation of damages of the defendant in error at what in their judgment was the value of the defendant's land on April 19, 1912, the date of appropriation by the United States, and not to add anything thereto by way of interest or otherwise on account of the time intervening between the date of appropriation and the date of the verdict.

4. That although the lands were appropriated on April 19, 1912, and used thereafter by the United States, no order was entered by the court formally placing the United States in possession of the same except that contained in the final judgment entered on January 30, 1918.

5. Pursuant to the above, final judgment was entered on January 30, 1918, requiring the deposit by the United States of the amount of the verdict, namely $16775.84, and separate order directing the payment of interest on the amount of verdict from April 19, 1912, to date of verdict was subsequently entered on the same date, namely, $5625.10, to which latter

order ...e United States duly excepted and to review which the writ of error is prosecuted.

S. BURKHART,
U. S. Attorney, District of New Mexico.
7 P. W. DENT,
District Counsel, U. S. Reclamation Service.

REID, HERVEY & IDEN
GEORGE S. DOWNER,
Attorneys for Defendant in Error.

(Praecipe for transcript—Filed September 9, 1918.)

To the Clerk of the Above Named Court:

You will please forward to the Clerk of the Circuit Court of Appeals with your return to the writ of error in the above case, copies of the following papers:

1. Petition for writ of error.
2. Assignments of error.
3. Order granting writ of error.
4. The agreed statement of facts on writ of error.
5. This praecipe.

Also, the following original papers in the case:— The Writ of Error, and Citation on Writ of Error with return of service thereon.

S. BURKHART,
United States Attorney
P. W. DENT,
District Counsel, U. S. Reclamation Service, Attorney for Plaintiff in Error.

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8 (Citation and waiver of service.)

In the District Court of the United States for the Eighth Circuit.

The United States of America To Margie L. Highsmith—Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth cir-

cuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of New Mexico, sitting at Santa Fe, wherein The United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Kimbrough Stone, Judge of the Circuit Court of Appeals of the United States for the 8th Circuit this 19th day of July, A. D. 1918.

KIMBROUGH STONE,
Judge.

Proof of Service.

The United States of America,
District of New Mexico—ss.

Receipt of a copy of the foregoing citation is hereby acknowledged and further service thereof is hereby waived.

Albuquerque, N. M., August 24th, 1918.

GEORGE S. DOWNER,
Attorney for Defendant in Error.

(Writ of Error and Clerk's Return.)

9 The President of the United States of America, To the Honorable, the Judge of the District Court of the United States, for the District of New Mexico, —Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you at the October Term, 1917, thereof, between the United States of America, as plaintiff, and Margie L. Highsmith, as defendant, a manifest error hath happened, to the great damage of the said United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly,

you send the record and proceedings aforesaid, with all thing concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 17th day of September, 1918, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this 19th day of July, in the year of our Lord, one thousand nine hundred and eighteen, and of the Independence of the United States, the 143rd year. Issued, at office in the city and County of Santa Fe, in said district with the seal of the district court of the United States for the district of New Mexico, and dated as aforesaid.

Seal
U. S. Dist. Court,
Dist. of New Mexico,
1912

WYLY PARSONS,
Clerk United States District Court,
District of New Mexico.

Allowed by Hon. Kimbrough Stone
Judge C. C. A.

Return.

The United States of America,
District of New Mexico,—ss.

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of the district court of the United States for the district of New Mexico, at the city and county of Santa Fe, in said district, this 11th day of September, 1918.

WYLY PARSONS,
Clerk.

cuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of New Mexico, sitting at Santa Fe, wherein The United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, The Honorable Kimbrough Stone, Judge of the Circuit Court of Appeals of the United States for the 8th Circuit this 19th day of July, A. D. 1918.

KIMBROUGH STONE,
Judge.

Proof of Service.

The United States of America,
District of New Mexico—ss.

Receipt of a copy of the foregoing citation is hereby acknowledged and further service thereof is hereby waived.

Albuquerque, N. M., August 24th, 1918.

GEORGE S. DOWNER,
Attorney for Defendant in Error.

(Writ of Error and Clerk's Return.)

9 The President of the United States of America, To the Honorable, the Judge of the District Court of the United States, for the District of New Mexico, —Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you at the October Term, 1917, thereof, between the United States of America, as plaintiff, and Margie L. Highsmith, as defendant, a manifest error hath happened, to the great damage of the said United States of America as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly,

you send the record and proceedings aforesaid, with all thing concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 17th day of September, 1918, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the United States, this 19th day of July, in the year of our Lord, one thousand nine hundred and eighteen, and of the Independence of the United States, the 143rd year. Issued, at office in the city and County of Santa Fe, in said district with the seal of the district court of the United States for the district of New Mexico, and dated as aforesaid.

Seal
U. S. Dist. Court,
Dist. of New Mexico,
1912

WYLY PARSONS,
Clerk United States District Court,
District of New Mexico.

Allowed by Hon. Kimbrough Stone
Judge C. C. A.

Return.

The United States of America,
District of New Mexico,—ss.

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of the district court of the United States for the district of New Mexico, at the city and county of Santa Fe, in said district, this 11th day of September, 1918.

WYLY PARSONS,
Clerk.

10 (Clerk's Certificate to Transcript.)

United States of America,
District of New Mexico—ss.

I, Wyly Parsons, Clerk of the District Court of the United States for the District of New Mexico, hereby certify the foregoing transcript, consisting of nine (9) pages constitutes a full, true and correct copy of the proceedings had and orders entered in the said cause, as set forth therein; as the same appears on file and of record in this office, with the exception of the writ of error and the citation, herewith attached at pages 8 and 9, respectively, which are the original writ, and citation.

The foregoing constitutes the entire transcript in the cause, as indicated by the praecipe for transcript filed by plaintiff in error, and set out at page 7, of the foregoing transcript.

Seal
U. S. Dist. Court,
Dist. of New Mexico,
1912

Witness my hand and the official seal of said Court, at Santa Fe, in the District of New Mexico, this 11th day of September, A. D. 1918.

WYLY PARSONS, Clerk.

Filed Sep. 13, 1918. E. E. Koch, Clerk.

9 And thereafter the following proceedings were had in said *cuase*, in the Circuit Court of Appeals, viz:

(Appearance of Counsel for plaintiff in error.)

United States Circuit Court of Appeals, Eighth Circuit.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
MARGIE L. HIGHSMITH. } No. 5263.

The clerk will enter my appearance as counsel for the plaintiff in error.

S. BURKHART,
U. S. Atty. for N. M.
P. W. DENT,
Dist. Counsel Reclamation Service.

Sept. 16/18.
(Endorsed): Filed in U. S. Circuit Court of Appeals, Sep. 19, 1918.

(Appearance of counsel for defendant in error.)

The clerk will enter my appearance as counsel for the defendant in error.

W. C. REID,
J. M. HERVEY,
GEORGE S. DOWNER,
Albuquerque, New Mexico.
(Endorsed): Filed in U. S. Circuit Court of Appeals, Sep. 20, 1918.

10 (Order advancing cause to docket of December term, 1918.)

December term, 1918.

THURSDAY, *December 12, 1918.*

This cause having been called to the attention of the court upon the stipulation of the parties to consolidate with cause No. 5166, United States of America v. William E. Rogers et al., for purpose of hearing in this court, it is now here ordered by the court that this cause be, and the same is, advanced to the calendar of the present December term, 1918, and set for hearing on this day with said cause No. 5166.

(Order of submission.)

December term, 1918.

THURSDAY, *December 12, 1918.*

UNITED STATES OF AMERICA, PLAINTIFF in error, *vs.* WILLIAM E. ROGERS ET AL.	No. 5166. In error to the District Court of the United States for the District of New Mexico.

and

UNITED STATES OF AMERICA, PLAINTIFF in error, *vs.* MARGIE L. HIGHSMITH.	No. 5263. In error to the District Court of the United States for the District of New Mexico.

These causes having been called for hearing this day, are, pursuant to stipulation of parties, argued together, and the argument was commenced by Mr. P. W. Dent for plaintiff in error, continued by Mr. J. M. Hervey for defendants in error, and concluded by Mr. P. W. Dent for plaintiff in error.

11 Thereupon these causes were submitted to the court on the transcripts of the records from said district court and the briefs of counsel filed herein; and if it is deemed advisable, the same will be submitted on the records and briefs to a third judge.

12 (Opinion.)

United States Circuit Court of Appeals, Eighth Circuit.

December term, A. D. 1918.

THE UNITED STATES OF AMERICA, PLAINTIFF in error, *vs.* MARGIE L. HIGHSMITH, DEFENDANT in error.	No. 5263. In Error to the District Court of the United States for the District of New Mexico.

Mr. P. W. Dent, district counsel, United States Reclamation Service (Mr. S. Burkhart, United States attorney, and Mr. J. O. Seth, assistant United States Attorney, were with him on the brief), for plaintiff in error.

Mr. J. M. Hervey (Mr. W. C. Reid and Mr. George S. Downer were with him on the brief), for defendant in error.

Before HOOK, Circuit Judge, and TRIEBER, District Judge.

HOOK, Circuit Judge, delivered the opinion of the court.

This case is like No. 5166 just decided except in the following particulars: Both the United States and the land owner, Margie L. Highsmith, appealed from the award of the condemnation commissioners to the district court, where the case was tried to a jury.

The parties having agreed that the question of interest on the amount awarded was one of law for the court, it instructed the jury that interest should be allowed; and a verdict was so returned. It was also agreed that the court should make a separate order requiring the deposit of interest so that the Government might prosecute a
13 writ of error to review that matter only. That was accordingly done. Finally, it was stipulated "That although the lands were appropriated on April 19, 1912, and used thereafter by the United States, no order was entered by the court formally placing the United States in possession of the same except that contained in the final judgment entered on January 30, 1918."

We do not regard these differences as material or calling for a conclusion different from that announced in the other case. The Government took title and possession, and the land owner was deprived of both on April 19, 1912. The final judgment of the court did not change that situation. True, a land owner might himself commence suit and thereby hasten the day of payment, but one objection to making that a requisite is that the purpose of the Government, whether a permanent appropriation or a temporary occupancy, is at times not disclosed or even not finally determined.

The order is affirmed.

Filed March 25, 1919.

14 (Judgment.)

United States Circuit Court of Appeals, Eighth Circuit.

December term, 1918.

TUESDAY, *March 25, 1919.*

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
MARGIE L. HIGHSMITH. } No. 5263.

In error to the District Court of the United States for the District of New Mexico.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the district of New Mexico, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said District Court, in this cause be, and the same is hereby, affirmed without costs to either party in this court.

March 25, 1919.

(Petition for writ of error from Supreme Court, U. S.)

To the honorable judges of the United States Circuit Court of Appeals, Eighth Circuit:

The above-named plantiff in error, the United States of America, feeling aggrieved by the judgment entered in the above-entitled cause on the 25th day of March, A. D. 1919, affirming the judgment

of the United States District Court for the District of New Mexico, dated January 30, 1918, and entitled "Order for payment of interest," awarding Margie L. Highsmith interest at six per cent
15 (6%) per annum from April 19, 1912, to date of verdict, on the amount of compensation awarded said party by the verdict of the jury entered by said District Court on January 12, 1918, does hereby apply for a writ of error from the United States Supreme Court, for the reasons set forth in the assignment of errors filed herewith, and prays that the said writ of error may be allowed, and that citation issue as provided by law, and that a transcript of the record upon which said judgment was based, duly authenticated, be sent to the said United States Supreme Court, under the rules of said court in such cases made and provided.

S. BURKHART,
United States Attorney for the Dist. of New Mexico.

A. MITCHELL PALMER,
Attorney General.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun. 24, 1919.

(Assignment of errors on writ of error from Supreme Court, U. S.)

Now comes the plaintiff in error in above-entitled cause and files the following assignment of errors upon which it will rely upon prosecution of its writ of error in above-entitled cause, to the judgment entered by this court on the 25th day of March, A. D. 1919.

I. That the United States Circuit Court of Appeals for the 8th Circuit, erred in affirming the judgment of the United States District Court for the District of New Mexico entered January 30, 1918, awarding interest against the United States from April 19, 1912, to date of verdict, for the reason that interest is not properly and legally allowable in a condemnation case against the United States for any period prior to date of final judgment.

16 II. That the United States Circuit Court of Appeals, 8th Circuit, erred in affirming the said judgment of the United States District Court for the District of New Mexico awarding interest against the United States from April 19, 1912, to date of verdict, for the reason that interest is not properly and legally allowable in a condemnation case against the United States for any period prior to date of order of court placing the United States in possession of the lands condemned.

III. That the United States Circuit Court of Appeals, 8th Circuit, erred in affirming the said judgment of the United States District Court for the District of New Mexico in awarding interest against the United States from April 19, 1912, to date of verdict, for the reason that interest is not properly allowable by the court, as a matter of law, to be added to the verdict, the question of whether or not additional compensation as an element of damage on account of use and occupation of the lands condemned prior to the date of

judgment in condemnation or payment of compensation, being a matter for the decision of the commissioners or jury, in the light of conditions prevailing.

IV. That the said United States Circuit Court of Appeals erred in affirming the judgment of the United States District Court for New Mexico in awarding interest, as aforesaid, for the reason that defendants did not, in their pleadings, demand interest or additional compensation, as damages, on account of the use of premises prior to legal condemnation or payment of compensation.

V. That the United States Circuit Court of Appeals, 8th Circuit, erred in holding that, as a matter of law, interest is a part of the just compensation guaranteed by the Constitution of the United States, and that such interest should be allowed by the court as a matter of law from April 19, 1912, to date of verdict.

VI. That the United States Circuit Court of Appeals, 8th Circuit, erred in affirming the decision of the United States District Court for the District of New Mexico in awarding interest at the rate of six per cent (6%) per annum against the United States from
17 April 19, 1912, to date of verdict, for the reason that there is no authority of law for allowing interest at said rate on judgments against the United States.

Wherefore the plaintiff in error prays that said judgment or order be reversed and that said United States District Court for the District of New Mexico be ordered to enter a decree reversing the decision of the lower court in said cause.

S. BURKHART,
United States Attorney for the District of New Mexico.
A. MITCHELL PALMER,
Attorney General.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun. 24, 1919.

(Order allowing writ of error from Supreme Court, U. S.)

On this 23rd day of June, A. D. 1919, came the plaintiff in error, the United States of America by P. W. Dent, Dist. counsel, U. S. Reclamation Service, and presented to the court its petition praying for the allowance of a writ of error, together with assignment of errors intended to be urged by it. Praying also that a transcript of the record, proceedings, and papers on which the judgment and order appealed from was rendered, duly authenticated, may be sent to the United States Supreme Court, and that such order and further proceedings may be had as may be proper in the premises.

On consideration whereof the court does allow the writ of error as prayed.

WALTER I. SMITH,
Judge, United States Circuit Court of Appeals, 8th Circuit.

Counsil Bluffs, Iowa, June 23, 1919.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun. 24, 1919.

18 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judges of the United States Circuit Court of Appeals, Eighth Circuit, greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said United States Circuit Court of Appeals, 8th Circuit, before you, or some of you, between the United States of America and Margie L. Highsmith, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, District of Columbia, and filed in the office of the clerk of the United States Supreme Court, on or before the 20th day of August, 1919, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States, this 24th day of June, in the year of our Lord one thousand nine hundred and nineteen.

Issued at office in the city of St. Louis, Missouri, with the seal of the United States Circuit Court of Appeals for the Eighth Circuit, and dated as aforesaid.

[SEAL.]

E. E. KOCH,
Clerk U. S. Circuit Court of Appeals for the Eighth Circuit.

Allowed by

WALTER I. SMITH,
Judge United States Circuit Court of Appeals, 8th Circuit.

Return to writ.

UNITED STATES OF AMERICA,
Eighth Circuit, ss:

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit at office in the city of St. Louis, Missouri, this twenty-second day of July, A. D. 1919.

E. E. Koch,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) No. 3263. United States of America, plaintiff in error, vs. Margie L. Highsmith, defendant in error. Writ of error from Supreme Court, U. S. Filed June 24, 1919. E. E. Koch, clerk.

19 THE UNITED STATES OF AMERICA.

To Margie L. Highsmith, greeting:

You are hereby cited and admonished to be and appear in the United States Supreme Court at Washington, District of Columbia, sixty days from and after the day this citation bears date, pursuant to a writ of error, filed in the clerk's office of the United States Circuit Court of Appeals, 8th Circuit, wherein the United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the party in that behalf.

Witness, the Honorable Walter I. Smith, judge of the United States Circuit Court of Appeals, 8th Circuit, this 23d day of June, in the year of our Lord one thousand nine hundred and nineteen.

WALTER I. SMITH,
Judge United States Circuit Court of Appeals, 8th Circuit.

Receipt of a copy of the foregoing citation is hereby acknowledged and further service thereof is hereby waived on behalf of defendant in error, this second day of July, A. D. 1919.

GEORGE S. DOWNER,
Attorney for Margie L. Highsmith,
Albuquerque, N. M.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 3263. United States of America, plaintiff in error, vs. Margie L. Highsmith. Citation and acknowledgment of service. Filed July 19, 1919. E. E. Koch, clerk.

20 (Clerk's certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United

States for the District of New Mexico, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States in a certain cause in said Circuit Court of Appeals, wherein The United States of America was plaintiff in error and Margie L. Highsmith was defendant in error, No. 5263, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original writ of error with the clerk's return endorsed thereon and the original citation with acknowledgment of sevice endosed thereon are hereto attached and herewith returned.

I do further certify that on the thirty-first day of May, A. D. 1919, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the Judges of the District Court of the United States for the District of New Mexico.

In testimony whereof, I hereunto subscribe by name and affix the seal of the United States Cricuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this twenty-second day of July, A. D. 1919.

[SEAL.] E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed on cover:) File No. 27223. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 468. The United States of America, plaintiff in error, *vs.* Margie L. Highsmith. Filed July 28th 1919. File No. 27223.

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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

THE UNITED STATES OF AMERICA, *plaintiff in error,*
v.
MARGIE L. HIGHSMITH.

No. 148.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

The writ of error in this case seeks to review a judgment of the Circuit Court of Appeals affirming a judgment of the District Court in a proceeding instituted by the government to condemn land. The specific complaint is that the court added to the damages awarded by the jury a sum equivalent to 6% per annum on the amount of damages from the date the land was taken to the date when the verdict of the jury was rendered.

STATEMENT.

January 18, 1915, in the District Court of the United States for New Mexico, the United States presented a petition alleging the appropriation

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April 19, 1912, of a real estate for use as a reservoir site under Act of Congress approved June 17, 1902, c. 1093, 32 Stat. 388, and praying for fixing of compensation to which defendant in error, its owner, was entitled and for condemnation. R. 3. The award by commissioners of appraisal of compensation to defendant in error recited that the sum reported did not include interest thereon from the date of appropriation. On appeal the case was tried again by jury, whose verdict was returned January 12, 1918.

By agreement the jurors were instructed that whether or not defendant was entitled to interest on the award was a matter of law for the determination of the court and were handed a form of verdict, reading:

> We, the jury in the above entitled cause, upon our oaths assess the damages of Margie L. Highsmith, for 314.92 acres of land at the sum of ——— with interest at the rate of 6% per annum from April 19, 1912. R. 3–4.

It appears further from an agreed statement (upon which alone the suit was heard in the Circuit Court of Appeals and is brought here) that interest from April 19, 1912, the date of appropriation, having been theretofore considered and held by the court to be proper and allowable "as a matter of law," the form of verdict so provided, it being agreed that separate order requiring deposit of interest should be entered in order to

allow writ of error on that point alone. In connection with the form of verdict the jurors were instructed to assess compensation at what in their judgment was the value of the land on April 19, 1912, and not to add anything thereto by way of interest or otherwise for the time between the date of appropriation and date of verdict. R. 4.

January 30, 1918, final judgment was entered, requiring deposit of the amount of the verdict. Afterwards, but on the same day, a separate order directing payment of interest thereon amounting to $5,625.10 from April 19, 1912, was entered, to which latter order the United States excepted (R. 4–5) and prosecuted writ of error from the Circuit Court of Appeals, which on March 25, 1919, affirmed the judgment below. R. 11. To review this action writ of error from this court has been sued out. The opinion of the Circuit Court of Appeals (R. 10–11) is reported in 257 Fed. 401.

It was agreed also that although the land was appropriated April 19, 1912, and used thereafter by the United States, no court order formally placing them in possession thereof was entered except that contained in final judgment entered January 30, 1918.

Aside from immaterial particulars made plain above, the instant case is in all respects like No. 147, *United States* v. *Rogers*. Mrs. Highsmith's property was included in the petition of January

18, 1915, along with other tracts whose owners (defendants in error in No. 147) did not by appeal seek jury trial as did defendant in error in this case.

In this, as in the other suit, it does not appear from the record that any evidence was offered to show what were the actual damages, if any, suffered because of deprivation of possession for the period antedating judgment and, as stated, the jurors here were instructed not to add anything to the award by way of interest or *otherwise* on account of time intervening between appropriation and verdict. There is thus presented the question whether interest as such for the period specified is allowable as matter of law and *as a legal right*.

SPECIFICATION OF ERRORS.

Errors assigned here (R. 12–13), in substance those relied on in No. 147 and presenting practically identical questions, are condensed as follows:

(1) In proceedings for condemnation brought by the United States the interest claimed (at a fixed rate) for any period prior to final judgment or prior to a court order placing them in possession is not properly and legally allowable by the court as of right or as part of the just compensation guaranteed by the Constitution.

(2) What additional compensation, if any, should be allowed as an element of damages on ac-

count of use and occupation enjoyed prior to judgment or payment of compensation awarded for the land is matter for consideration in the light of prevailing conditions by a jury.

(3) Since in defendant's pleadings there was no demand for interest or additional compensation as damages on account of the use of the premises prior to legal condemnation or payment of compensation there was error in affirming the judgment of the district court in awarding interest as aforesaid.

Inasmuch as the issues on this record are substantially like those presented in No. 147 and as the decision there will control, an extended brief has not been printed and the government respectfully offers the printed argument and brief already presented in No. 147 as applicable and available here.

CONCLUSION.

For the reasons set forth in our brief in No. 147, the judgment of the Circuit Court of Appeals should be reversed.

Respectfully submitted.

FRANK K. NEBEKER,
Assistant Attorney General.
CHARLES S. LAWRENCE,
Attorney.

NOVEMBER, 1920.

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SUPREME COURT OF THE UNITED STATES.

No. 148.—October Term, 1920.

The United States of America, Plaintiff in Error, *vs.* Margie L. Highsmith.	In Error to the United States Circuit Court of Appeals for the Eighth Circuit.

[February 28, 1921.]

Mr. Justice Day delivered the opinion of the Court.

This case is like No. 147 just decided, and was argued and submitted at the same time.

In this instance the Government and the landowner appealed from the award of the Commissioners, and the case was tried to a jury. Jurors were instructed that the allowance of interest was a matter of law, and in a form of verdict given to them, interest at 6% was to be added from April 19, 1912, the date of appropriation.

It appears that by agreement a separate order requiring the deposit of interest was entered in order to allow a writ of error upon that point, and in connection with the above form of verdict the jurors were instructed to assess compensation as of the value of the land on April 19, 1912, and not to add interest from that time to the date of the verdict. Afterwards a final judgment was entered in the District Court requiring a deposit of the amount of the verdict, and a separate order was made directing payment of interest from April 19, 1912. A writ of error was prosecuted from the Circuit Court of Appeals where the judgment of the District Court was affirmed. 257 Fed. 401.

The Circuit Court of Appeals recited the facts of the case, and held that it was ruled by *United States* v. *Rogers et al.*, No. 147, just decided. We agree with this conclusion, and the judgment of the Circuit Court of Appeals is

Affirmed.